

Newspaper and Mail Deliverers Union of New York and Vicinity and Newark Morning Ledger Company

Newark Mailers Union No. 11 a/w International Typographical Union and Newark Morning Ledger Company. Cases 22-CD-359 and 22-CD-360

March 26, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Newark Morning Ledger Company, herein called the Employer, alleging that Newspaper and Mail Deliverers Union of New York and Vicinity and Newark Mailers Union No. 11 a/w International Typographical Union herein, called Respondents, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to their members, respectively, rather than to employees represented by the other Respondent.

Pursuant to notice a hearing was held before Hearing Officer Susan K. Anderson on October 9, 1980. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a New Jersey corporation with a facility located at 20 Duke Road, Piscataway, New Jersey, is engaged in the business of publishing newspapers. During the past year, the Employer purchased goods from outside the State having a value of \$50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Newspaper and Mail Deliverers Union of New York and Vicinity (NMDU) and Newark Mailers Union No. 11 a/w International Typographical Union are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. Background and Facts of the Dispute

The Employer commenced operations on September 15, 1980, at a new auxiliary printing plant at Piscataway, New Jersey. Its main facility is located at Court and University Streets, Newark, New Jersey.

The newspapers in the Piscataway plant enter the mailroom through apertures in the wall separating the pressroom from the mailroom. The papers are counted, converted into bundles by a stacking machine, moved on a conveyor past employees who count and label them, and then moved to a tying machine. From the tying machine the bundles move on a series of straight conveyors to a cart conveyor which carries the bundles in an oval loop and then dumps them through chutes onto boom loaders situated at the apertures in the exterior walls. At a central point in the mailroom an employee operates a computer terminal which directs the carts where to dump the bundles.

Upon the September 15 opening of the Piscataway plant the Employer assigned all the work in the mailroom, including the work in dispute, to employees represented by Mailers Union No. 11. This assignment accorded with the Employer's practice of over 20 years' duration of assigning wall-to-wall mailroom jurisdiction to employees represented by Mailers Union No. 11. The work outside the exterior wall of the plant, loading the bundles off the boom loaders and onto the trucks, was assigned to employees represented by NMDU. The Piscataway plant was designed with this jurisdiction division in mind.

On September 15, 16, and 17, 1980, representatives of the NMDU picketed the plant from midnight to 3 a.m., bearing signs which read: "Notice to Public And/Organized Labor/NMDU Protesting Newark Star Ledger/Unfair/Refuses To Bargain." NMDU drivers employed by wholesalers honored the picket lines on those mornings but resumed work on September 18, 1980, and thereafter. There has been no picketing since September 17, 1980. At a September 16 meeting with the Employer at the Piscataway plant, NMDU representatives asserted jurisdiction over the work in dispute.

On September 17, 1980, the president of Mailers Union No. 11, Ledger employee Carmine Grippo, informed the Employer's assistant publisher, Mark Newhouse, that he had heard that the work in dispute was going to be assigned to the NMDU and, if that happened, that his Union would strike.

B. *The Work in Dispute*

The work in dispute involves the handling of newspapers and jurisdiction over equipment after the wire tying machines in the mailroom at the Piscataway plant. This work now includes only the operation of the computer console, but the NMDU claims the work of monitoring the conveyor system in the cart loop area. At present no employees are stationed there. When jams in this area occur they are now cleared by other mailroom employees as part of their general duties.

C. *The Contentions of the Parties*

The Employer contends that a jurisdictional dispute exists and that there is reasonable cause to believe that Section 8(b)(4)(d) has been violated. The Employer also contends that the work in dispute has been properly assigned to Ledger employees who are represented by Mailers Union No. 11. The Employer further contends that the NMDU picketed the Ledger in an effort to force the Ledger to assign the work in dispute to employees represented by the NMDU instead of employees represented by Mailers Union No. 11. The Employer also contends that the president of Mailers Union No. 11, Carmine Grippo, told the Employer's assistant publisher that, if the work in dispute were reassigned to NMDU, his Union would strike. In its brief the Employer argues that relative skills, the operative collective-bargaining agreements, efficiency and economy, the general practice in the New Jersey area, and its past practice and preference support an award of the work in dispute to employees represented by Mailers Union No. 11. The Employer also contends that New Jersey rather than New York is the relevant geographic area.

Mailers Union No. 11 takes the same position as the Employer and admits that it threatened to strike the Employer if the work were reassigned to employees represented by NMDU.

The NMDU contends that, on the basis of its collective-bargaining agreement, efficiency, safety, and relative skills, the work in dispute should be awarded to employees represented by NMDU. The NMDU elicited testimony at the hearing that at several New York newspapers the NMDU has complete jurisdiction over newspapers after they have passed the tying machine.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon

a method for the voluntary adjustment of the dispute.

The record establishes that on September 15, 16, and 17, 1980, representatives of NMDU picketed the Piscataway plant from midnight until 3 a.m. in order to force the reassignment of the work in dispute to its own members. Based on the record as a whole, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.

The record further establishes that on September 17, 1980, the president of Mailers Union No. 11, Carmine Grippo, informed the Employer's assistant publisher, Mark Newhouse, of his membership's intent to strike if the work were reassigned to NMDU members. There is no evidence in the record that the strike threat was anything but genuine. Under settled Board policy reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred exists if a labor organization, which represents employees who are assigned the disputed work, puts improper pressure upon an employer to continue such assignment.¹ Based on the foregoing, and the record as a whole, we find that there is reasonable cause to believe that another violation of Section 8(b)(4)(D) has occurred.

We further find that there is no agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound. No party has contended, and the record contains no evidence, that any such method exists. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.² The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.³

The following factors are relevant in making the determination of the dispute before us:

¹ See, e.g., *International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 27 (Joseph E. Segrum & Sons, Inc.)*, 198 NLRB 407, 408 (1972); *Local 1184, Southern California District Council of Laborers (H. M. Roberston Pipeline Constructors)*, 192 NLRB 1078, 1079 (1971).

² *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

³ *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

1. Certification and collective-bargaining agreements

There is no current Board certification which covers the work in dispute. The Employer is a party to separate collective-bargaining agreements with the NMDU and Mailers Union No. 11, and both Unions contend that their collective-bargaining agreements provide that the work in dispute should be assigned to their members. Sections 1(a) and (d) of Mailers Union No. 11's contract provide in pertinent part:

1(a) the Jurisdiction of the Union is defined as all work appertaining to mailing and including . . . taking bundles or papers from conveyors or escalators which enter and leave mailing sacks, distributing counting and checking of papers leaving or returning to the mail room(s), tying and sacking delivering papers [sic] (to mailers, carriers, agents or newsboys on the premises of the Employer).

* * * * *

(d) The Publisher has the right to install and operate any mailroom equipment, whether or not it is now in use. The method of operation of such equipment shall be determined by the foreman.

The recognition clause of the operative contract between the Employer and the NMDU provides:

1. Subject to the provisions hereinafter set forth, the Publisher recognizes the Union as the exclusive representative for collective bargaining of its employees engaged in the following operations, handling bundles from conveyor belts to tail board of trucks.

The wording of the two collective-bargaining agreements clearly supports an award of the work in dispute to employees represented by the Mailers Union No. 11. Section 1(a) of Mailers Union No. 11's collective-bargaining agreement specifically identifies the work in dispute, while the jurisdictional clause of the NMDU agreement specifically covers only the handling of bundles from the conveyors to the trucks and makes no mention of the work in dispute. The language of the foregoing contracts also reflects the division which has taken place in the Employer's plants. Thus Mailers Union No. 11 has traditionally had inside wall-to-wall jurisdiction in this Employer's mailrooms. We therefore conclude that the collective-bargaining agreements support an award of the work in dispute to the group of employees represented by the Mailers Union No. 11.

2. Area practice

Testimony at the hearing established that the practice at other newspapers in the New York-New Jersey area varies. Mailers Union No. 11 represents mailroom employees of four other New Jersey newspapers: The Wall Street Journal (Dow Jones) in South Brunswick, The Home News in New Brunswick, the Morristown Daily Record in Morristown, and The Dover Advance in Dover. The NMDU represents mailroom employees at two New Jersey newspapers: The Jersey Journal in Jersey City and The Paterson Evening News in Paterson. There is no split jurisdiction in these six plants.

In New York, however, NMDU and New York Mailers Union No. 6 split mailroom jurisdiction at the New York Times, the New York Daily News, and the New York Post. There is also split jurisdiction at The New York Times plant in Carlstadt, New Jersey. At these plants employees represented by Mailers Union No. 6 operate the tying machines during certain shifts and employees represented by NMDU operate them during other shifts. Employees represented by NMDU have complete jurisdiction over the newspapers after they leave the tying machines.

It thus appears that the general practice among newspapers in the State of New Jersey is for one labor organization to have jurisdiction over all employees in the mailroom, and the Mailers Union represents such employees in most cases. *Newspaper and Mail Deliverers' Union of New York and Vicinity (Dow Jones and Company, Inc., et al.)*, 186 NLRB 981 (1970). We find, accordingly, that area practice supports an award of the work in dispute to the group of employees represented by Mailers Union No. 11.

3. The Employer's past practice and preference

In the present instance and for over 20 years the Employer has assigned the work in dispute to employees represented by Mailers Union No. 11. The Employer testified at the hearing and submitted a brief in support of this assignment. We conclude that the Employer's past practice and preference support an award of the work in dispute to the group of employees represented by Mailers Union No. 11.

4. Relative skills

The machinery inside and outside the mailroom is mostly automated. At present Ledger employees who are members of Mailers Union No. 11 perform backup services for machinery which malfunctions

within the mailroom, and the delivery truckdrivers who are members of NMDU do the same for the boom loading machinery outside the mailroom.

The Employer's representative testified that the employees who are represented by NMDU do not now possess the mechanical skills necessary to monitor the machinery involved in the work in dispute, while those employees represented by Mailers Union No. 11 do. We find, therefore, that the relative skills of employees represented by Mailers Union No. 11 and NMDU support an award of the work in dispute to employees represented by Mailers Union No. 11.

5. Economy and efficiency of operation

The work in dispute is now being safely and efficiently performed by members of Mailers Union No. 11. If the work in dispute were to be reassigned to employees represented by NMDU, it would become necessary for the Employer to hire additional employees since the work is now performed by mailroom employees as part of their general duties. It also appears that in the event the cart system malfunctions, if employees represented by NMDU were assigned to monitor the system, those employees would stand idle while employees represented by Mailers Union No. 11 repaired the system. We find, therefore, that the factors of economy and efficiency support an award of the disputed work to employees represented by Mailers Union No. 11.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Mailers Union No. 11 are entitled to perform the work in dispute. We reach this conclusion on the basis that the collective-bargaining agreement between the Employer and Mailers Union No. 11 specifically includes the work in dispute, the Employer's

present assignment is consistent with its past practice and preference and with area practice, the employees represented by Mailers Union No. 11 possess the necessary skills to perform the work in dispute, and this award results in greater economy and efficiency of operations than would a contrary award. In making this determination, we are awarding the work in question to employees who are represented by Mailers Union No. 11, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Newark Morning Ledger Company, who are represented by Newark Mailers Union No. 11 a/w International Typographical Union are entitled to perform the handling of newspapers and equipment after the tying machines in the mailroom at the Newark Morning Ledger Company at Piscataway, New Jersey.

2. Newspaper and Mail Deliverers Union of New York and Vicinity is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Newark Morning Ledger Company to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Newspaper and Mail Deliverers Union of New York and Vicinity shall notify the Regional Director for Region 22, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.